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SIPDIS

STATE FOR EAP/MTS
STATE PASS TO USTR FOR BWEISEL AND DKATZ
USDOC FOR 4430/ITA/MAC/SBERLINGUETTE
USDOC PASS USPTO FOR PFOWLER
BANGKOK FOR CHRIS SONDERBY AND JENNIFER NESS

SENSITIVE
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TAGS: KIPR ETRD ECON RP

SUBJECT: What's Next For the Roxas Bill?

REF: 06 Manila 837

Summary

¶1. (SBU) With Congress now in recess, the Roxas pharmaceutical bill will not pass before the May elections, and may not pass at all. Despite initial worries that the bill would contravene TRIPS in several respects, Post's engagement with Roxas and other legislators helped to secure several amendments to bring most aspects of the bill into conformity with international agreements. Given the political appeal of less expensive prescription drugs, Roxas may make a last ditch effort to get his legislation passed in the short lame duck session in June and, if that fails, will likely reintroduce his bill in the next Congress. Post will continue to engage Congress on the pharmaceutical bill, and is generally encouraged by the inclination of many legislators to consider the quality of IPR protection before voting for the bill. End summary.

The Populist Desire for Cheaper Prescriptions

¶2. (U) Senator Manuel "Mar" Roxas introduced the "Cheaper Medicines Act," more commonly called the "Roxas Bill," in November 2005. The bill was a political response to the high cost of pharmaceuticals in the Philippines relative to the rest of Asia. The bill sought to lower the cost of drugs and increase competition among pharmaceutical manufacturers primarily by:

--making it easier for the producers of generic drugs to access the proprietary data of patent holders;
--prohibiting the granting of patents for new uses of existing drugs;
--permitting parallel imports of patented pharmaceuticals;
--applying the principle of international patent exhaustion to shorten the terms of certain Philippine-issued patents.

In its initial form, the Roxas Bill appeared to violate several provisions of TRIPS, most seriously in its data exclusivity provisions and its prohibition on new use patents.

Prejudice and Presidential Aspirations

¶3. (SBU) Roxas, upon his election to the Senate in 2004, was inclined to legislate on pharmaceuticals as a result of his prior encounters with the drug industry as Secretary of Trade and Industry. In that position, Roxas had advocated the parallel

importation of pharmaceutical products from India for sale in government-run neighborhood pharmacies. This in turn led a multinational drug manufacturer to sue the GRP successfully for patent infringement. This left Roxas with an axe to grind against drug companies, and a prejudice against what he considered to be overly generous GRP patent protection for prescription drugs.

¶4. (SBU) Roxas clearly also sees the pharmaceutical price issue as a political winner in the lead-up to 2010 presidential elections, in which he plans to run. In 2004 Senate elections Roxas received the highest number of votes ever in a Philippines-wide campaign. Roxas clearly believes the popularity of lower drug prices can benefit him politically. Other politicians agree, and not one of them has been willing to take a public position against the bill.

Post's Response

¶5. (SBU) Given the contradictions between the first drafts of the Roxas Bill and TRIPS, and the potential damage that this could do to American pharmaceutical companies, Post actively engaged Roxas and other legislators, coordinating closely with the Department and the Office of the United States Trade Representative. Officers from the Economic Section have met with Roxas on several occasions over the past two years, as have USTR officials. Post also met repeatedly with Representative Junie Cua, chair of the Trade and Industry Committee in the House and sponsor of the counterpart bill on the House side and with various other legislators. All were receptive to USG views of the bill, and maintained their willingness to amend the bill to eliminate most conflicts with TRIPS. However, Roxas and Cua held their ground on new use patents, rejecting the argument that TRIPS mandates their issuance and arguing that few other countries permit them.

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The Pharmaceutical Lobby

¶5. (SBU) The pharmaceutical lobby, led by the Pharmaceutical and Healthcare Association of the Philippines (PHAP), has made its own efforts on the Roxas Bill, though PHAP focused more on defeating the bill than on obtaining amendments. PHAP concentrated on a public relations campaign that warned that parallel importation would introduce counterfeit drugs into the country. Few of its last-minute proposals for far-reaching amendments were considered seriously in Congress.

Senate Passage, Controversy in the House

¶6. (U) As the May 2007 elections neared and the 13th Congress moved to wrap up its business, the Senate and House versions of the Roxas Bill moved toward final votes. The Senate bill (SB 2263), fresh from amendments made during interpellation that generally reinforced the primacy of TRIPS, passed unanimously on January 31, illustrating that given the strong public appeal of the issue, the bill would likely pass final votes regardless of its content. In the House, Cua's bill came up for debate on second reading during a two-day special session on February 19-20.

¶7. (SBU) During this debate, an incident arose in the House involving lobbyists from PHAP. With the election campaign underway, many legislators were not present in the House. A note from PHAP representatives urging a Congressman to request a quorum call circulated among several legislators, who accused PHAP of violating House rules. A shouting match ensued on the House floor as these members tried to force the lobbyists to leave. Once order was restored, several amendments from the floor toughened the bill by requiring all pharmacies to sell parallel imports alongside versions produced for the Philippine market and creating a price control board for pharmaceuticals. Roxas' staff told us that the senator had no prior warning of these amendments, and that he does not support price control mechanisms. The amended bill passed the House on second reading, and still requires approval on third reading before it can go to a conference committee.

Could It Still Pass In This Session?

¶8. (SBU) Congress is now in recess until after the May 14 elections, at which point it is likely to meet for only three days. However, there is a chance that the bill could pass during the lame-duck session the week of June 4. Joaquin Lagonera, head of the Presidential Legislative Liaison Office, told EconOff that President Arroyo considers the medicines bill a priority and has instructed him to work to secure its passage in this Congress. Lagonera said that several House members have indicated that they are considering abandoning their own version of the bill and passing the milder Senate version on third reading. Doing so would obviate the need for a conference committee and place the bill on the President's desk for signature. Post will follow up with Lagonera as part of our efforts to gauge intentions.

Or Will It Wait For The Next Congress

¶9. (SBU) If it does not pass in this Congress, Roxas is likely to reintroduce his bill in the 14th Congress that will sit in July 2007, though Blas Viterbo, Roxas' legislative director, told EconOff that Roxas, who is in the middle of a six-year term, has not yet made a final decision. If he plans to focus his presidential campaign on drug prices, it would be a logical step to reintroduce the bill in order to keep the issue in the public's mind.

¶10. (SBU) The President of PHAP told us that he is certain that the bill will be reintroduced, and that he still fears the addition of radical provisions similar to those in the House from this session. For its own part, PHAP plans a campaign to make the Roxas Bill moot by advocating a national health service on the British model that covers prescription drugs. In so doing, PHAP believes it can move the discussion away from price controls and expand the market for its products to lower-income groups via a government plan. Such a plan would, however, be problematic, and it is doubtful that the proposal will thrive in Congress. The plan does not propose a way to finance a universal health service, and nothing prevents Roxas from grafting his patent bill onto a national health care plan. In fact, it may be a logical step.

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Comment

¶11. (SBU) For a time, it appeared that the Roxas Bill meant a step backwards in IPR protection in the Philippines. However, as the course of debate on the bill progressed, Roxas and other legislators showed sensitivity to TRIPS, and a willingness to amend the bill to keep it close to being TRIPS-consistent. Similarly, despite the populist appeal of a bill that purports to reduce the cost of medicines, Congress has resisted the urge to enact it without debate and reflection. While legislators are concerned about the price of prescription drugs, and are aware of the electoral potency of the issue, there is equal concern about the credibility of IPR protection. We expect the issue to remain alive in the next Congress, and Post will continue to engage its contacts on IPR protection.

Kenney